

# Modification of Minister's Approval

## Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure under delegation executed on 14 September 2011, I approve the modification of the project application referred to in Schedule 1, subject to the conditions in Schedule 2.



Heather Warton  
Director

**METROPOLITAN AND REGIONAL PROJECTS NORTH**

Sydney

1st May

2012

### SCHEDULE 1

**Project Approval:** 06\_0250 granted by the Deputy Director-General on 28 June 2010, and as modified on 1 April 2011

**For the following:** Project approval for:

- 1) Bulk earthworks and vegetation clearing;
- 2) Subdivision of land for the creation of 411 lots under a community title scheme (including 370 residential lots, 38 super lots, 2 commercial lots and 1 community lot);
- 3) Creation of ecological conservation areas to be managed as Community Conservation Lands (under the community lot);
- 4) Creation of recreational and open space network including formal parks and an Aboriginal cultural heritage reserve;
- 5) Creation of two sites for commercial areas and recreational/community centre area;
- 6) Construction of a road network including internal roads, pedestrian pathways and a shared footpath/cycleway on part of Nelson Bay Road;
- 7) Construction of stormwater management measures;
- 8) Creation of asset protection zones;
- 9) Associated landscaping; and
- 10) Works to connect to reticulated services (water, sewerage, power and telecommunications).

**Modification:** 06\_0250 Mod 3: To revise the approved subdivision layout to incorporate stormwater detention basin 6 within the development footprint.

## SCHEDULE 2

The approval as described in Schedule 1 is modified as follows:

### **Insert a new definition of Certifying Authority and amend the definition of Council as follows:**

**Certifying Authority** means a person who is authorised by or under section 109D of the Act to issue a construction certificate under Part 4A of the Act; or in the case of Crown development, a person qualified to conduct a Certification of Crown Building works.

**Council** means Port Stephens Council ~~or a certifying authority where applicable under the Environmental Planning and Assessment Act 1979.~~

The approval as described in Schedule 2 is modified as follows:

### **Condition A1 is amended as follows:**

Project approval is granted only to carrying out the project described in detail below:

- 1) Bulk earthworks and vegetation clearing;
- 2) ~~Subdivision of land for the creation of 411 lots under a community title scheme (including 370 residential lots, 38 super lots, 2 commercial lots and 1 community lot);~~ **Subdivision of land for the creation of 473 lots under a community title scheme (including 441 residential lots – inclusive of 9 duplex lots and 1 triplex lot, 29 superlots, 2 commercial lots and 1 community lot;**
- 3) Creation of ecological conservation areas to be managed as Community Conservation Lands (under the community lot);
- 4) Creation of recreational and open space network including formal parks and an Aboriginal cultural heritage reserve;
- 5) Creation of two sites for commercial areas and recreational/community centre area;
- 6) Construction of a road network including internal roads, pedestrian pathways and a shared footpath/cycleway on part of Nelson Bay Road;
- 7) Construction of stormwater management measures;
- 8) Creation of asset protection zones;
- 9) Associated landscaping; and
- 10) Works to connect to reticulated services (water, sewerage, power and telecommunications).

### **Condition A2 is amended as follows:**

Stages 1 to 3 are the subject of separate approvals issued by other authorities. The project is to be constructed in 17 sequential stages, generally as follows:

- (1) Stage 4 comprises:
  - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) ~~3951~~ **3951** lots;
  - (c) Construction of sewer pump station P4;
  - (d) Construction of a shared footway/cycleway from the bus shelter in front of Bayway Village to the intersection of Seaside Boulevard and Nelson Bay Road;
  - (e) Establishment of Aboriginal Heritage Reserve (R3);
- (2) Stage 5 comprises:
  - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) ~~2851~~ **2851** lots;

- (c) **Construction of a sewer pump station P5;**
  - (d) **Construction of infiltration basin 6;**
  - (e) **Construction of unnamed park (R6), including recreation facilities;**
- (3) Stage 6 comprises:
- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) ~~4537~~ lots, including 5 superlots **1 commercial lot;**
  - (c) ~~Construction of sewer pump station P5;~~
  - (d) ~~Construction of Banksia Park (R4), including recreation facilities;~~
  - (e) ~~Construction of infiltration basin 6 (Note: the location of this basin shall be amended in accordance with Condition B1);~~
- (4) Stage 7 comprises:
- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) ~~4931~~ lots, including 4 superlots;
  - (c) **Construction of Banksia Park (R4), including recreational facilities**
- (5) Stage 8 comprises:
- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) ~~2364~~ lots;
  - (c) ~~Construction of sewer pump station P6;~~
  - (d) ~~Construction of conveyance swale to infiltration area 5;~~
- (6) Stage 9 comprises:
- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) Construction of sewer pump station P7;
  - (c) ~~298~~ lots, including 1 superlot;
  - (d) **Construction of conveyance swale to infiltration area 5;**
- (7) Stage 10 comprises:
- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) ~~47~~ lots, including 1 superlot and 1 commercial lot (lot 200);
- (8) Stage 11 comprises:
- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) 20 lots;
- (9) Stage 12 comprises:
- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) 26 lots, including 1 superlot;
- (10) Stage 13 comprises:
- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) 12 lots, including 4 superlots;
  - (c) Construction of swale to infiltration area 4;

- (11) Stage 14 comprises:
- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) 22 lots, including 2 superlots;
  - (c) Northern extension of Seaside Boulevard, including an intersection with Nelson Bay Road (northern intersection);
  - (d) Construction of Corymbia Park (R5), including recreation facilities;
- (12) Stage 15 comprises:
- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - ~~(b) Construction of sewer pump station P3;~~
  - (c) 32 lots, including 1 superlot;
- (13) Stage 16 comprises:
- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) 14 lots, including 5 superlots;
- (14) Stage 17 comprises:
- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) 39 lots;
- (15) Stage 18 comprises:
- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) 16 lots, including 4 superlots;
- (16) Stage 19 comprises:
- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) 11 lots, including 5 superlots and 1 commercial lot (lot 383);
  - (c) Construction of drainage swale to infiltration area 1;
- (17) Stage 20 comprises:
- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
  - (b) 18 lots, including 5~~6~~ superlots;
  - (c) Construction of unnamed park (R2), including recreation facilities.

The scope and extent of works within each stage of this project as outlined above may be varied due to market conditions and servicing constraints as agreed to by Council.

**Delete Condition A3 and replace with the following:**

The project will be undertaken generally in accordance with the Environmental Assessment, the Preferred Project Report and the following drawings:

Drawing No.	Name of Plan	Plot Date
29850E – Sheet 1 of 23	Staging and Lot Layout Rev-E	27/03/2012
29850E – Sheet 2 of 23	Staging Plan	27/03/2012
29850E – Sheet 3 of 23	Stages 4-6 Detail Plan Rev-E	21/03/2012
29850E – Sheet 4 of 23	Stage 7 Detail Plan Rev-E	23/03/2012

29850E – Sheet 5 of 23	Stages 8-10 Detail Plan Rev-E	17/01/2012
29850E – Sheet 6 of 23	Stages 11&12 Detail Plan Rev-E	23/03/2012
29850E – Sheet 7 of 23	Stages 13&14 Detail Plan Rev-E	17/01/2012
29850E – Sheet 8 of 23	Stages 15&16 Detail Plan Rev-E	17/01/2012
29850E – Sheet 9 of 23	Stage 17 Detail Plan Rev-E	17/01/2012
29850E – Sheet 10 of 23	Stages 18&19 Detail Plan Rev-E	25/01/2012
29850E – Sheet 11 of 23	Stage 20 Detail Plan Rev-E	17/01/2012
29850E – Sheet 12 of 23	Indicative Sewer Layout Rev-E	27/03/2012
29850E – Sheet 13 of 23	Indicative Watermain Layout Rev-E	27/03/2012
29850E – Sheet 14 of 23	Land Tenure Plan Rev-E	27/03/2012
29850E – Sheet 16 of 23	Concept site Drainage Plan – Proposed Swales and Basins Rev-E	27/03/2012
29850E – Sheet 17 of 23	Flood Prone and Low Lying Areas Rev-E	27/03/2012
29850E – Sheet 23 of 23	Bulk Earthworks (Cut-Fill) Plan Rev-E	27/03/2012

<b>Engineering Drawings prepared by Martens &amp; Associates and Cardno</b>			
<b>Drawing No's.</b>	<b>Revision</b>	<b>Name of Plan</b>	<b>Date</b>
<b>Martens Plan</b>			
P090247JD01_V5	5	Concept Site Drainage Plan – Proposed Swale and Basins (Sheet 1 of 4) as modified by Cardno Plan (see below)	24/12/2009 Submitted with Supplementary Water Cycle management information prepared by Martens & Associates Pty Ltd dated April 2010 provided in Annexure C of Further Response for Submission Report, prepared by ERM and dated April 2010
<b>Cardno Plan</b>			
89023935-CSK2	1	Concept Site Drainage Plan Proposed Swales and Basins: for proposed residential development South East Precinct, Fern Bay	24/01/2012
<b>Landscape Drawings Prepared by North Point Surveys and Terras Landscape Architects</b>			
<b>Drawing No.</b>	<b>Name of Plan</b>		<b>Date</b>
29850 Landscape Plan – Sheet 1 of 1	29850 Landscape Plan		27/03/2012

**Amend Condition A9 as follows:**

Any future application for dwellings on the lots shall include proposed water supply measures in accordance with Council's requirements and the recommendations of the *Sewer and Water Strategy* (prepared by GHD, dated November 2004) as amended by Sewer and Servicing Strategy Addendum Report (prepared by DMS Survey Pty Ltd, undated) submitted as part of Annex O of the EA, referred to in Condition A4 **and as may be updated from time to time.**

**Amend Condition B3 as follows:**

Final road design plans must be prepared by a qualified practising Civil Engineer for each stage and approved by Council prior to the issue of a Construction Certificate for that stage.

Kerb and gutter, stormwater drainage, full road width pavement including traffic facilities (roundabouts, median islands etc.) and paved footpaths shall be constructed along the full length of the new roads. All Roads shall be designed in accordance with the relevant requirements of Council and the RTA (as applicable).

Local Area Traffic Management (LATM) measures are to be incorporated into the entire road network, **particularly where block length exceeds 160m.** It is sufficient to provide a plan view of

proposed locations (spacing ideally <150m apart) along with a typical section and plan view of the type(s) of LATM device(s) that are proposed. For bus routes and major traffic routes, devices such as lane narrowing, kerb extensions at intersections, and alternate intersection are preferred to vertical deflection devices. The design and location of LATM devices should consider cyclists.

**Amend Condition B4 as follows:**

The shared footpath/cycleway along Nelson Bay Road must be constructed prior to the issue of any subdivision certificate that creates the ~~hundredth~~ **two hundred and fiftieth** residential lot of the development. It shall be designed and constructed at the cost of the Proponent, in accordance with the requirements of Council. The Roads and Traffic Authority must be consulted where there is a potential interface between the road pavement and the shared footpath/cycleway.

Detailed plans for the footway/cycleway (extending from the existing roundabout at the intersection of Nelson Bay Road and Fullerton Cove Road to the bus shelter at Bayway Village to the south) shall be approved by Council, prior to the issue of the Construction Certificate for the civil works that create the ~~hundredth~~ **two hundred and fiftieth** residential lot of the development (clearing and/or Bulk Earthworks Construction Certificates may be issued prior to the approval of a Construction Certificate for the civil works). ~~The plans should be prepared in accordance with Footpath and Cycleway drawing (drawing no. 29850A, Sheet 19 of 22, prepared by Daly Smith Pty Ltd, dated 25/3/2010).~~

**Amend Condition B5 as follows:**

The northern extension of Seaside Boulevard and upgraded intersection with Nelson Bay Road (as identified on the ~~'Site and Staging Plan' (drawing 29850A— Sheet 1 of 22, prepared by Daly Smith Pty Ltd, dated 25/3/2010)~~ **'Staging and Lot Layout Plan Rev-E', Sheet 1 of 23, drawing 29850E, prepared by North Point Surveys dated 27/03/2012** must be constructed as part of Stage 14. The works (including the new intersection) must be designed and constructed at the cost of the proponent.

The following requirements of the Roads and Traffic Authority (RTA) must be met prior to issue of a construction certificate for these works:

- The proposed new vehicular access to/from Nelson Bay Road shall be designed/constructed with left turn deceleration and acceleration lanes in accordance with the RTA's Road Design Guide, including a provision for on road cyclists and a central median to prevent right turn in and out movements. Intersection lighting shall be provided to Australian Standards;
- Geometric road design shall be in accordance with the RTA Road Design Guide. Pavement design shall be in accordance with the AUSTRROADS Pavement Design Guide;
- The proponent shall enter into a Works Authorisation Deed with the RTA for any works within the Nelson Bay Road reservation. In this regard, the developer is required to submit detailed design plans and all relevant additional information, as may be required by the RTA's Works Authorisation Deed documentation, for each specific change to the State road network for the RTA's assessment and final decision concerning the work;
- The applicant shall obtain a Road Occupancy Licence from the RTA; and,
- Section 138 concurrence under the *Roads Act 1993* shall be obtained from the RTA.

**Note1:** This condition amends Statement of Commitment no. 31.

**Note 2:** The conditions of approval do not guarantee the RTA's final consent to the specific road work, traffic control facilities and other structures works on the classified road network. The RTA must provide a final consent for each specific change to the state road network prior to the commencement of any work. Further changes to the intersection design may be required during the detailed design phases, as part of the Works Authorisation Deed (WAD) process. The RTA will not undertake further design reviews until the WAD is executed and RTA fees and charges are paid.

**Amend the first paragraph of condition B14 as follows:**

A detailed Landscaping and Revegetation Plan for each stage is to be approved by Council prior to the issue of any Construction Certificate for that stage. The plan shall update the Landscape Master Plan (Drawing L2, prepared by Verge Landscape architects, dated 18/05/2007, provided in Annex G of the EA) and **29850 Landscape Plan, Sheet 1 of 1, prepared by Noth Point Surveys and dated 27/03/2012** Streetscaping Planting Plan (Figure 4 in the Submissions Report, prepared by ERM, dated December 2009) to reflect the final subdivision layout (as required by Condition B2).

**Amend Condition B15 as follows:**

The Proponent must design and construct all recreation facilities as identified by the 'Site and Staging Plan' (drawing 29850A - Sheet 1 of 22, prepared by Daly Smith Pty Ltd, dated 25/3/2010) and 'Land Tenure Plan' (drawing 29850A, Sheet 13 of 22, prepared by Daly Smith Pty Ltd, dated 25/03/2010). **'Staging and Lot Layout Plan Rev-E', Sheet 1 of 23, drawing 29850E, prepared by North Point Surveys dated 27/03/2012 and 'Land Tenure Plan Rev-E', Sheet 14 of 23, drawing 29850E, prepared by North Point Surveys dated 27/03/2012.** Plans detailing the provision of child play equipment, seating, shading, bins and drinking bubblers are to be provided to Council for approval prior to the release of the Construction Certificates for:

- ~~Stage 6 (for Banksia Park (R4));~~ **Stage 7 (for Banksia Park (R4));**
- Stage 14 (for Corymbia Park (R5)); and,
- Stage 20 (for Unnamed Reserve (R2))

**Amend Condition B16 as follows:**

A total of ~~5 sewage pumping stations~~ **3 sewage pump stations (P3, P5 and P7)** are to be provided in the development (~~P3 - P7~~) as depicted on ~~Indicative Sewer Layout Rev-A (Drawing no. 29850A, Sheet 11 of 22, prepared by Daly Smith Pty Ltd, dated 25/03/2010)~~ **'Indicative Sewer Layout Rev-E', Sheet 12 of 23, drawing 29850 E prepared by North Point Surveys dated 27/03/2012.** The location of each pumping station is to be approved by Hunter Water, prior to the issue of the Construction Certificate for the applicable stage.

The final pumping station locations should be selected to minimise the vegetation clearing on the Community Conservation Lands.

The pumping station is to be provided on a separate parcel of land, which is to be dedicated to Hunter Water and easements as necessary for access are to be created (refer to Condition E11).

**Amend Condition B23 as follows:**

Change the plan reference to be "*Land Tenure Plan Rev-E (drawing 29850E, Sheet 14 of 23, prepared by North Point Surveys dated 25/01/2012).*"

The draft *Fern Bay Estate Aboriginal Heritage Reserve - Cultural Heritage Management Plan* (prepared by ERM, dated June 2006, ref:0012720) must be updated and finalised in consultation with the local Aboriginal community, prior to the release of a Construction Certificate for Stage 4,

The plan must identify an additional Aboriginal Heritage Reserve. No development shall occur within the reserve.

The Aboriginal Heritage Reserve (identified as 'R3' reserve on 'Land Tenure Plan' (drawing 29850A, Sheet 13 of 22, prepared by Daly Smith Pty Ltd, dated 25/03/2010) **'Land Tenure Plan Rev-E', Sheet 14 of 23, drawing 29850E, prepared by North Point Surveys dated 27/03/2012** shall be established during Stage 4. The Reserve shall continue to be managed by the Proponent until such time as the Reserve is transferred to the Community Association.

**Note:** This condition should be read in conjunction with Statement of Commitment no. 24.

**Amend Condition E4 as follows:**

Prior to the issue of the Subdivision Certificate for ~~Stage 20~~ **the last stage of subdivision**, evidence shall be provided that the dune restoration/stabilisation works, required by Condition **B13**, have been completed.

**Amend Condition E17 as follows:**

Prior to the release of the Subdivision Certificate for ~~Stage 4~~ **that creates the 250<sup>th</sup> residential lot**, Council is to inspect and confirm that shared footway/Cycleway required by Condition **B4** is satisfactorily completed. Council is to be provided with certification that all works are in accordance with Condition **B4**.